

GAO

Report to the Chairman, Subcommittee
on Human Resources, Committee on
Post Office and Civil Service, House of
Representatives

November 1992

PERSONNEL PRACTICES

Schedule C and Other Details to the Executive Office of the President



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The Honorable Paul E. Kanjorski
Chairman, Subcommittee on
Human Resources
Committee on Post Office
and Civil Service
House of Representatives

Dear Mr. Chairman:

This report responds to your April 9, 1992, request and our subsequent discussions with the Subcommittee about the detailing of executive agency employees by the Cabinet-level departments and the Environmental Protection Agency (EPA) to Executive Office of the President (EOP) agencies.¹ Specifically, you asked that we determine (1) agency compliance with appropriation act requirements that agencies certify that a Schedule C position is not being created for the sole or primary reason of detailing the employee to the White House; (2) compliance with reimbursement requirements for details over 180 days in a fiscal year to those five EOP agencies; (3) the extent that Schedule C detailees to these five EOP agencies were converted to career positions at these EOP agencies since January 20, 1989; and (4) whether any other executive branch personnel performed duties at the five EOP agencies. We also examined the accuracy of EOP's most recent annual report to Congress on the number of agency employees detailed to it for more than 30 days and examined EOP's reliance on detailees during various fiscal years.

Background

Schedule C positions are excepted from the competitive service and are at or below the Grade 15 level. These positions are either of a policy determining nature or involve a close and confidential working relationship with a key official, such as a presidential appointee, another Schedule C appointee, or a Senior Executive Service (SES) appointee occupying either a noncareer or a general position.

The Office of Personnel Management (OPM) must approve the establishment of each permanent Schedule C position and any subsequent position changes. Since November 6, 1990, in requesting OPM approval for a Schedule C position, heads of agencies have been required under the fiscal

¹The five EOP agencies included in this review are the White House Office, the Executive Residence at the White House, the Office of the Vice President, the Office of Policy Development, and the Office of Administration (OA).

years 1991, 1992, and 1993 Treasury, Postal Service, and General Government Appropriations acts to certify that the position is not being created solely or primarily to detail the employee to the White House.² In part, the certification requirement resulted from the work we did from 1987 to 1990, which concluded that the practice of hiring employees for Schedule C positions solely or primarily for the purpose of detailing them directly to the White House was an inappropriate use of Schedule C authority.

At the time of that work, OPM defined a detail as the temporary assignment of an employee to a different position for a specified period, with the employee returning to regular duties at the end of the detail. In May 1990, OPM modified its definition of a detail as the temporary assignment of an employee to a different position or set of duties for a specified period of time. Details of Schedule C employees are not different from details of other federal employees with regard to the need for reimbursement as required by law.

The requirement that agencies be reimbursed for details is derived from principles of appropriations law. Under these principles, lending agencies must be reimbursed for the costs of employees who are loaned to other agencies, unless the employees are doing work at the receiving agency that is related to the mission of their lending agencies.³ An exception exists under Public Law 95-570, November 2, 1978. Under this exception, employees can be detailed to the five EOP agencies on a nonreimbursable basis for up to 180 calendar days in a fiscal year. However, the law requires the five EOP agencies to reimburse the lending agencies for such details extending beyond 180 calendar days when the detailees are performing services that have been or would have otherwise been performed by employees of those five EOP agencies.

Public Law 95-570 also requires EOP to report data to Congress each fiscal year on the number of agency employees detailed for more than 30 days to any of the five EOP agencies included in our review.

²This requirement does not apply to employees detailed from agencies performing intelligence functions.

³Nonreimbursable details are also permitted for brief periods of time when the detail has a negligible impact on the appropriations of the loaning agency.

Results in Brief

We found a total of 115 employees from various agencies who were detailed to four of the five⁴ EOP agencies during fiscal year 1991. These 115 detailees represented a substantial reduction from the 342 detailees we previously identified at EOP agencies for fiscal year 1980. The EOP identified another 25 persons who worked at the EOP agencies during fiscal year 1991 that EOP categorized as nondetailees. Four persons were on a task force at the Office of Policy Development, and 17 were assigned to the Office of the Vice President. The remaining four other individuals consisted of two Presidential Management Interns, one White House Fellow, and one participant in the President's Commission on Executive Exchange. In addition, from Department of Defense (DOD) records we identified another group of civilian DOD employees who worked at EOP. For example, as of April 1992 DOD reported 11 individuals who, as part of their job descriptions, worked at 3 of the 5 EOP offices. Five worked in the White House Photographer's Office, five worked in the Office of the Vice President, and one worked in the White House Office. EOP considers these individuals to be nondetailees because they performed historically provided services to the president as commander-in-chief.

We identified 76 Schedule Cs who were on detail at the EOP agencies during the period November 6, 1990, through March 31, 1992. Four of these employees were appointed after November 6, 1990, and therefore subject to the certification requirement. For three of the four employees, lending agencies complied with appropriation act certification requirements in appointing and detailing the Schedule C employees. One of the agencies did not submit a certification for the fourth Schedule C, who had a temporary appointment, due to administrative oversight. We believe that OPM needs to better ensure that all agencies are aware of the need to certify temporary as well as permanent Schedule C positions. Further, the lending agencies often did not bill EOP for reimbursement for detailees, which indicates the need for them to be reminded of this responsibility. In addition, we found that (1) no Schedule C detailees at one of the five⁵ EOP agencies had been converted to career positions for the 39-month period we reviewed and (2) with the exception of three details, EOP's fiscal year 1991 annual report to Congress on details to it reconciled with EOP and lending agency records.

EOP identified five categories of other employees working at EOP that it considers "nondetailees" because it believes they do not meet OPM's definition of a detail. As such, they are not identified as detailees in EOP's

⁴The Executive Residence at the White House reported no detailees for fiscal year 1991.

⁵Of the five EOP agencies, only OA has the authority to make competitive appointments.

annual report to Congress on detailees. Further, EOP does not apply the reimbursement criteria to them as it does for detailees. The five categories are (1) assignees; (2) agency representatives who represent their agencies on such groups as task forces and councils; (3) persons providing historically performed services, such as DOD employees supporting the president as commander-in-chief; (4) White House Fellows; and (5) Presidential Management Interns. We agree with EOP on all but the first category, assignees.

According to EOP, assignees should not be considered detailees because they are performing their normal duties while permanently or temporarily assigned to the EOP complex and, therefore, occupied the same positions they held at their agencies, even though they were located at EOP. We do not view this fact as indicating the individuals are not detailees. We believe other factors, such as who supervises the individual on a daily basis, are also relevant in determining whether an individual is a detailee. In our view, the definition of "detailee" should be clarified and nondetailees should be separately reported to Congress by EOP.

Objectives, Scope, and Methodology

At the request of the Chairman, Subcommittee on Human Resources, House Committee on Post Office and Civil Service, we examined the detailing of executive agency employees by the Cabinet-level departments and EPA to five EOP agencies. Our objectives were to determine (1) agency compliance with appropriation act provisions that require agencies to certify that Schedule C positions are not created solely or primarily to detail the employee to the White House; (2) agency and EOP compliance with their respective reimbursement requirements for detailees to the five EOP agencies for over 180 days in a fiscal year; (3) the extent that any Schedule C detailees to the five EOP agencies were converted to career positions at the agencies during the period January 20, 1989, through May 15, 1992; and (4) whether any other executive branch personnel performed duties at the five EOP agencies. We also examined the accuracy of EOP's fiscal year 1991 report to Congress on the number of agency employees detailed to it for more than 30 days and examined EOP's reliance on detailees during various fiscal years.

To test agency compliance with the Schedule C certification requirement, we examined official personnel folders (OPF) for all Schedule C employees from the Cabinet-level departments and EPA that were on detail to any of the five EOP agencies during the period November 6, 1990, through March 31, 1992. We examined the OPFS and OPM records for certification

statements for the Schedule C appointments made on or after November 6, 1990, the effective date of the certification requirement. We also looked at the service records of these employees to determine the length of time between the dates of the appointments and the details to EOP.

In assessing compliance with reimbursement requirements, we reviewed agency records of all detailees from the Cabinet-level departments and EPA working in four of the five EOP agencies during fiscal year 1991. The Executive Residence at the White House did not have any detailees during fiscal year 1991. Our universe included agency employees who were detailed before fiscal year 1991 and were at EOP during some part of fiscal year 1991. We computed the number of days the detailees were working in these four EOP agencies during fiscal year 1991 and then determined if they were considered to be reimbursable. If so, we determined whether the lending agencies billed the appropriate EOP agency. We compared the detailee information we developed at the lending agencies with EOP records and resolved any discrepancies between agency and EOP records.

To determine if any of the Schedule C detailees received career appointments at the five EOP agencies, we reviewed official personnel folders at the one EOP agency, OA, that can make competitive appointments. We reviewed folders for 46 of the 48 employees who were given competitive appointments by OA between January 20, 1989, and May 15, 1992. The other two employees had left EOP employment, and EOP no longer had their files.

To examine the completeness of EOP's fiscal year 1991 report on agency employees detailed to it, we reviewed EOP and agency records. We compared the number of detailees we identified with the EOP report and reconciled differences.

We interviewed officials and reviewed records from the 15 executive agencies to identify the extent that other executive branch personnel performed duties at the 5 EOP agencies. Further, OA officials voluntarily provided us with a list of 25 individuals who worked at the Office of the Vice President, the Office of Policy Development, and the White House Office whom they consider to be nondetailees. We discussed with OA officials the role of these individuals and EOP's basis for defining these individuals as nondetailees.

We did our review from April 1992 to September 1992 in accordance with generally accepted government auditing standards. OPM, the Office of

Management and Budget (OMB), and EOP provided written comments on a draft of this report, which are included in appendixes II, III, and IV, respectively.

Lending Agencies' Compliance With Certification Requirements

From agency and EOP records, we identified 76 Schedule Cs that were on detail to one of three EOP agencies during the period of November 6, 1990, through March 31, 1992.⁶ Of these, four had been appointed and detailed on or after November 6, 1990, and, therefore, were subject to the certification requirement. The agencies complied with the requirement to certify that the position was not created for the sole or primary purpose of detailing the Schedule C to the White House for three of the four appointees. The Department of Education did not certify one of two Schedule C appointments due to administrative oversight. Appointment and detail data about these four detailees are summarized in table 1.

Table 1: Schedule Cs Appointed and Detailed From November 6, 1990, Through March 31, 1992

Detailing agency	Date appointed	Date detailed	Days elapsed	Days on detail in fiscal year 91
Education	3/4/91	6/23/91	111	99
Education	5/24/91	7/31/91	68	52
Justice	4/24/91	8/5/91	103	56
Labor	2/4/91	6/23/91	139	99

Source: agency records.

One Lending Agency Did Not Comply With Certification Requirements

Of these four Schedule C detailees, we found documentary evidence either at the agency or OPM of the requisite certification to OPM that these appointees were not hired solely or primarily to work at EOP in three of the cases. In the fourth case, the agency no longer had documents on file for this individual. In pursuing this case with OPM, we found that this individual had been appointed to a temporary Schedule C position, but the Department of Education did not submit the required certification to OPM. OPM requires that an agency provide the required certification at the same time the agency requests approval of a permanent Schedule C position. However, an OPM official said that agencies are not required to obtain OPM approval of temporary Schedule C positions. Thus, OPM has no way to determine when an agency is required to submit a certification for a temporary Schedule C position. We asked Education officials why they

⁶The other two EOP agencies—OA and the Executive Residence at the White House—did not have any Schedule C detailees during this period.

had not submitted a certification for this position. An official said that this appointment occurred around the time that a new Secretary of Education was appointed and, with the associated turnover of staff, the certification must have been neglected due to administrative oversight.

On March 28, 1991, OPM notified agency White House liaisons through a memorandum of the need to obtain certifications for temporary as well as permanent Schedule C positions. In addition, in a May 10, 1991, memorandum, OPM reiterated this requirement to agency personnel directors. However, OPM officials told us that they have not formally included this requirement in the Federal Personnel Manual.

We called to determine if White House liaisons and personnel officials for 3 of the 15 agencies in our review were aware of the certification requirement for temporary Schedule C positions. At one of the three agencies, neither the White House liaison nor the appropriate personnel official was aware of the requirement to submit certifications for temporary Schedule C positions. Because the certification requirement has been renewed in the Treasury, Postal Service, and General Government Appropriations Act for fiscal year 1993, we believe OPM needs to again inform agencies of this requirement and the need to adhere to it. It should also include the certification requirement for both temporary and permanent Schedule C appointments in the Federal Personnel Manual.

Interval Between Appointment and Detail

We have previously expressed concern about the practice of hiring Schedule C appointees and then immediately or soon thereafter assigning them to EOP.⁷ We reported that OPM regulations generally prohibit the interagency detailing of certain employees within 3 months of a competitive appointment. However, we said there were no similar regulations pertaining to Schedule C employees. Therefore, we recommended that OPM issue regulations prohibiting the detailing of Schedule C appointees within 90 days of appointment to preclude the inappropriate use of Schedule C authority. OPM subsequently decided that, in keeping with its overall goal of giving agencies the necessary flexibility to manage effectively, it would not be appropriate to regulate this practice. Given OPM's disagreement, we suggested that legislation would be needed. The certification legislation was enacted, but it did not contain the 90-day requirement.

⁷See Related GAO Products on page 36.

As our data showed, three of the four detailees identified during our review worked 103 to 139 days before being detailed. For a detailee from Education, 68 days elapsed between appointment and detail. Although this detail did not meet our suggested 90-day criterion, we found no evidence to suggest that the appointment was made for the sole or primary purpose of detailing the individual to EOP.

Some Agencies Did Not Bill EOP for Reimbursement

We also identified the extent to which agencies with detailees, both Schedule C appointees and other employees, billed EOP for fiscal year 1991 details and were reimbursed by EOP. We found that of the 35 reimbursable details from 13 of the 15 agencies⁸ included in our review, agencies had not, as of March 31, 1992, billed 3 EOP agencies⁹ for 19 detailees for fiscal year 1991. Such failure to bill suggests the need to reemphasize lending agency adherence to appropriations law and ensure that proper procedures are in place to seek reimbursement from EOP.

In total, we found that 115 detailees were loaned during fiscal year 1991 to four of the five EOP agencies included in our review.¹⁰ Of the 115 detailees, 73 from 27 agencies had worked at these EOP agencies over 180 days in fiscal year 1991. Fifty-one of these 73 detailees who worked over 180 days were from 14 of the 15 agencies included in our review; the Department of Energy did not have any detailees who worked over 180 days at these 5 EOP agencies during fiscal year 1991.

Of the 51 detailees from the 14 agencies, reimbursement agreements were in place for 35; they were not in place for 16 because EOP and the agencies considered the details to be nonreimbursable. We found some documentation for 13 of the 16 detailees that indicated that the detail was not reimbursable. For the remaining three, EOP did not have documentation clearly stating that the detail was not reimbursable. An EOP official attributed this lack of documentation to the fact that all three began their details on or about January 20, 1989—the start of the new administration and the height of transition activity.

⁸The departments of Energy and Veterans Affairs did not have any reimbursable details to EOP during fiscal year 1991.

⁹The other two EOP agencies, OA and the Executive Residence at the White House, did not have any reimbursable details in fiscal year 1991.

¹⁰The Executive Residence at the White House reported having no detailees for fiscal year 1991.

Reimbursement Requirement

Public Law 95-570 states that employees can be detailed to the five EOP agencies under review on a nonreimbursable basis for up to 180 calendar days in a fiscal year. The law requires these five EOP agencies to reimburse the lending agencies for such details extending beyond 180 calendar days during the fiscal year when the detailees are doing work that would otherwise have been done by EOP employees. Therefore, reimbursement must be made for detailees in these five EOP agencies who are primarily performing EOP functions and not primarily performing functions furthering the mission of the detailing agency. Under a reimbursement agreement, the detailing agency bears the responsibility for requesting payment from EOP.

The reimbursement agreement is signed by officials from both the EOP agency and the lending agency and provides billing instructions, among other information. The lending agency's requirement to bill is stated on the agreement along with instructions that specify the form agencies need to bill EOP. The instructions also provide the name, address, and telephone number of the cognizant person in the EOP agency to whom lending agencies should send their bills. In addition, the reimbursement agreement shows when the detail is to begin, the effective date of reimbursement (if applicable), and the estimated cost to EOP.

The Financial Management Division (FMD) of OA handles the financial aspects of details for four of the five EOP agencies.¹¹ Upon receipt of a signed reimbursement agreement, FMD records the obligation for the detail, establishing an account for the detailee. The amount to be obligated is based on the interagency agreement. According to an FMD official, funds obligated for reimbursements for detailees cannot, under most circumstances, be used for another purpose. These obligations may remain open for up to 5 years. After the 5 year period, pursuant to 31 U.S.C. 1552(a), any funds to pay the obligations are cancelled.

Lending Agencies Had Not Always Billed the EOP Agencies

Ten of the 14 lending agencies that accounted for the 35 detailees with reimbursement agreements and who worked over 180 days had not billed the appropriate EOP agencies as of March 31, 1992, for all fiscal year 1991 details. In total, the 10 lending agencies had not billed EOP for \$429,926 owed for 19 detailees. Some of these same agencies, as well as others, had

¹¹FMD does not process accounting entries for the Executive Residence at the White House; instead, the National Park Service (Department of the Interior) provides these services.

billed for and received payments totaling \$246,122 for 15 other detailees.¹² Tables I.1 and I.2 in appendix I show the number and dollar amounts of details that agencies did and did not bill EOP for as of March 31, 1992.

We discussed the lack of billings with lending agency officials and received several explanations. The most cited reason was administrative oversight. For example, the departments of Defense, Transportation, and Health and Human Services (HHS) as well as EPA attributed the lack of billings for a total of seven detailees for fiscal year 1991 to administrative oversight. Further, HHS reported that it would take corrective measures to resolve the problem. HHS' Deputy Assistant Secretary for Personnel Administration said that HHS had no single point for reimbursement billings because HHS is decentralized. He said that he would provide the operating and staff divisions with regular reports reminding them of reimbursable details. He further said that he and the Deputy Assistant Secretary for Finance would issue joint guidance to the personnel and financial management offices emphasizing the importance of ensuring that reimbursements for details are billed and collected.

It appears that some sort of administrative error also caused other agencies not to bill for their detailees as well. For example, officials at the Agriculture detailee's home unit said that they asked the departmental personnel office about billing procedures as early as June 1991 but did not receive a response until April 22, 1992. The home unit was instructed by the departmental personnel office on April 22, 1992, to bill EOP. The home unit was also given, for the first time, a copy of the reimbursement agreement by the departmental White House liaison office. Conceivably, if the home unit had a copy of the agreement, which contains billing instructions, it could have billed EOP in a more timely manner.

During the course of our work, EOP received and paid additional billings. As of August 31, 1992, EOP had paid billings for 14 of the 19 detailees for which obligations were open as of March 31, 1992. EOP had not received billings for the other five detailees.

We believe these findings indicate the need to reemphasize to lending agencies the importance of promptly billing EOP for reimbursable details. We discussed the issue with officials from OMB's Office of Federal Financial Management. These officials agreed and suggested that the Chief Financial Officers Act, which is aimed at improving federal financial

¹²The remaining detailee came from the State Department. State's records showed it had billed EOP for this detailee in September 1991. However, EOP officials said they had not received a bill. A partial payment was made by EOP in April 1992 after we brought this situation to EOP's attention.

management and will be implemented under OMB direction, could be an appropriate vehicle for addressing these conditions.

No Schedule C Conversions in the Five EOP Agencies

We examined EOP records to identify instances in which agencies' Schedule C detailees were converted to career positions after being detailed to one of the five EOP agencies. We identified no Schedule C conversions to career appointments.

Schedule C appointees are permitted to apply and compete for career positions in the competitive service. In considering such applications, agencies must adhere to all merit system principles contained in the Civil Service Reform Act of 1978. These merit system principles require, among other things, that selection and advancement be determined solely on the basis of merit after fair and open competition.

Four of the five EOP agencies—the White House Office, the Office of the Vice President, the Office of Policy Development, and the Executive Residence at the White House—are not subject to the Civil Service Reform Act and do not have career positions in the competitive service. Instead, all employees in these agencies are subject to Title 3, which governs the hiring of presidential personnel.

The fifth EOP agency—OA—has both excepted service positions and career positions that would be subject to the Civil Service Reform Act. As of May 15, 1992, 48 individuals had received competitive appointments in OA since January 20, 1989. Our review of the official personnel folders of 46 of the 48 employees indicated that none of these employees had been converted from a Schedule C to a career position. The other two employees had left EOP employment, and EOP no longer had their files.

EOP Reporting Requirements

Public Law 95-570 requires EOP to report data to Congress each fiscal year on the number of agency employees detailed for more than 30 days to any of the five EOP agencies included in our review. With the exception of three detailees, the reported EOP data reconciled with the number of detailees we identified through our review of EOP and lending agency records.

Our analysis of EOP and lending agency records showed 106 detailees who served in the 4 EOP agencies¹³ for over 30 days during fiscal year 1991. EOP's

¹³The Executive Residence at the White House did not have any detailees on board during fiscal year 1991.

report to Congress for that fiscal year showed 103. We reconciled the difference with OA officials and found that three detailees to the Office of the Vice President had been overlooked.

Compared to earlier EOP reports to Congress on the number of detailees at EOP for over 30 days, the fiscal year 1991 report contained fewer omissions. For example, in our 1987 report,¹⁴ we identified 59 detailees from 12 departments at EOP who worked over 30 days who were not reported to Congress in fiscal year 1985. At the time of our 1987 review, EOP officials attributed some of the underreporting of detailees to the exclusion of detailees assigned to the Office of Presidential Personnel, a component of the White House Office. EOP officials agreed with us at that time that these detailees should not be excluded and said that future reports to Congress would include detailees to the Office of Presidential Personnel as appropriate. We noted that the fiscal year 1991 report included detailees to the Office of Presidential Personnel.

EOP's Historical Reliance on Detailees

During the course of our review, EOP officials said they have made a concerted effort in recent years to reduce their reliance on detailees. We examined this issue in two ways, each of which showed a substantial reduction since fiscal year 1980, the first year we reported on the detailing of employees to EOP pursuant to Public Law 95-570.

First, we compared the total number of detailees at EOP during the 2 fiscal years. For example, in March 1981, we reported identifying 342 detailees at EOP during fiscal year 1980 compared with 115 we identified in fiscal year 1991.

Second, we compared the number of days worked at EOP by detailees during the two periods based on EOP reports to Congress under Public Law 95-570. Table 2 shows a substantial reduction in the number of days worked by detailees at EOP comparing fiscal years 1980 with 1989 to 1991.

¹⁴Personnel Practices: Detailing of Federal Employees to the White House (GAO/GGD-87-102BR, July 22, 1987).

Table 2: Total Number of Days Worked by Detailees Who Worked More Than 30 Days During Fiscal Years 1980 and 1989-1991

Fiscal year	Number of days worked
1980	41,343
1989	25,836
1990	24,792
1991	24,908

Source: EOP reports to Congress.

In recent years, EOP has sought and received appropriations for additional full-time positions in order to convert some of the detailees to EOP employees. For example, for fiscal year 1992 the White House Office requested appropriations for 20 additional full-time positions. For fiscal year 1993, the White House Office requested funding for an additional 13 positions. According to EOP officials, Congress provided sufficient funds for the 20 positions in fiscal year 1992 and for 7 positions for fiscal year 1993.

Greater Clarification Needed for Other Persons Working at EOP

During our work, EOP and agency officials identified five other groups of individuals performing work at EOP. EOP refers to these individuals as “nondetailees” because it believes they do not meet the definition of detailee as defined by OPM. With the exception of one group that EOP refers to as “assignees,” we agree that the categories do not constitute detailees. With respect to assignees, we have considerable difficulty distinguishing these individuals from detailees. However, because the definition of a detailee is broad, it can be subject to different interpretations. Consequently, a more precise definition of detailee should be developed, and EOP should be required to report on the number of nondetailees it has as well as detailees.

EOP officials brought to our attention a total of 25 civilian employees who worked in the five EOP agencies during fiscal year 1991 and to whom they referred as nondetailees. Seventeen were assigned to the Office of the Vice President, and 4 were on a task force at the Office of Policy Development. These employees came from 11 agencies. The remaining four individuals—two Presidential Management Interns, one White House Fellow, and one participant in the President’s Commission on Executive Exchange—worked in the White House Office. In addition, DOD reported that as of April 1992 it had six civilian employees who, as part of their official position descriptions, performed duties at two of the five EOP offices. The Air Force reported an additional four civilian employees

whose position descriptions stated they were to work on national security affairs in the Office of the Vice President. The Navy reported one person who performed valet services for the president.

Because no formal definition of a nondetailee exists in either federal law or regulation, we asked EOP for its definition of "nondetailee." EOP said that a nondetailee is an individual who does not meet the definition of the term "detailee" as set forth by OPM. Under OPM guidance, a detail is the temporary assignment of an employee to a different position or set of duties for a specified period.

According to EOP, nondetailees handle matters ordinarily handled by the employing agency, aid in accomplishing the purpose for which the employing agencies' appropriations were made, provide services that cannot be obtained by other means and the number of persons involved or the costs are minimal, or there is a bona fide training purpose. The only difference, according to EOP officials, is that the work is done physically within EOP and not the employing agency. EOP said that some specific types of nondetailees would include the following five categories:

- assignees, who are employees from any agency who perform their normal duties while permanently or temporarily assigned to the EOP complex;
- agency representatives, who represent their agency as a member of a task force, working group, board, council, or commission;
- individuals performing historically provided services that have been traditionally performed by their department or agency, such as DOD military and civilian personnel providing support to the president in his role as commander-in-chief;
- White House fellows holding temporary appointments under Executive Order 11183 for the purpose of giving future leaders of the private sector and the uniformed services the opportunity to observe firsthand the functioning of the executive branch; and
- Presidential Management Interns, who are graduate degree recipients nominated by their schools. Those selected occupy developmental positions that provide a variety of rotational assignments and other training.

Except for "assignees," we agree that the other categories of individuals listed by EOP do not constitute detailees. With respect to "assignees," we do not view the fact that an individual is performing work that is equivalent to his or her "normal duties" at EOP as indicating that the individual is not a detailee. Detailees often perform the same work as their

normal duties. Indeed, they are frequently selected for the detail precisely because of the particular skills or expertise they apply in their normal duties.

We think several other factors also are relevant to determining whether an individual is a detailee, such as who serves as the individual's supervisor on a daily basis. For example, who does the individual report to, who provides the individual's specific work assignments, and who reviews the individual's work product? If the answer is EOP personnel, we would consider this a strong indication that the individual is, in fact, working for EOP instead of his or her agency. Without some evidence to the contrary, we would regard such an individual as occupying "a different position" from the one held at the home agency and, therefore, being a detailee.

We do not know to what extent those factors would result in reclassifying the 17 nondetailees or, more specifically, assignees identified by EOP who worked at the Office of the Vice President. We would need more specific information about them. Further, we do not take issue with the four individuals who were on a task force at the Office of Policy Development; nor do we take issue with the two Presidential Management Interns, one White House Fellow, and the one participant in the President's Commission on Executive Exchange who worked at the White House Office. Finally, we do not take issue with the DOD employees performing historically provided services for the president as commander-in-chief.

In discussing our disagreement on assignees with EOP officials, they pointed out three considerations in support of their view of the legitimacy of the assignee category. The first is the recognition set forth in the legislative history of Public Law 95-570 that the president's ability to carry out his constitutional responsibilities should not be restricted by preventing him from drawing upon the expertise of personnel in the executive branch. The second is EOP's statement that the existence of nondetailees dates back at least to 1979, when the Carter administration officially designated them as "other government agency" and did not report them as detailees in its annual report on detailees to Congress. Third, EOP officials pointed out that the current definition of a detailee is broad in many respects but silent on the question of supervision as a factor in determining if an individual is a detailee or a nondetailee. They emphasized that they have made a good faith effort to apply the current definition using their best judgment.

With respect to EOP's first point, we do not see how categorizing the types of personnel in question as detailees in any way restricts EOP from obtaining the expertise it needs. If these persons perform work of a nonreimbursable nature, the only added requirement EOP would be subject to by categorizing them as detailees would be including them in the reporting requirement to Congress. Regarding EOP's second point, comparing the characteristics of nondetailees during the Bush and Carter administrations was not within the scope of our review. Accordingly, we are not in a position to comment on the status of Carter administration nondetailees referred to by EOP.

Regarding EOP's third point, we recognize that a detailee is not defined by law and that the OPM definition can be subject to interpretation. Further, we have no reason to believe that EOP officials intentionally tried to manipulate or otherwise abuse the use of agencies' employees by calling them nondetailees. After all, EOP officials voluntarily brought the existence of this group of employees to our attention.

One effect of EOP's definition of assignees as nondetailees is that they do not appear in EOP's fiscal year reports to Congress on the number of agency detailees. Further, because they are not considered detailees, they are not subject to the reimbursement requirement.

Conclusions

In general, agencies and EOP appear to be making good faith efforts to implement legislative provisions covering the detail of agency employees to EOP, although greater emphasis can be placed on two aspects. Ten agencies failed to bill EOP for 19 reimbursable details as of March 31, 1992, largely due to administrative oversight or error. We believe, and OMB agrees, that lending agencies need to place greater emphasis on billing EOP in a more timely manner.

The requirement that agencies certify to OPM that Schedule C positions are not being created solely or primarily for the purpose of detailing the individual to EOP also needs to be emphasized. One agency failed to certify a temporary Schedule C appointment, and another agency, although it had no Schedule C detailees at EOP that were subject to the certification requirement, was unaware of OPM guidance on this matter. Because this statutory requirement has been renewed in the Treasury, Postal Service, and General Government Appropriations Act for fiscal year 1993, OPM should reemphasize the need for agencies to certify temporary and

permanent Schedule C appointments and include these requirements in the Federal Personnel Manual to better ensure that the law is followed.

During our work, EOP identified another category of persons it designated as nondetailees. It provided us with its definition of nondetailees and cited five categories of agency employees that fit its description. We agree with four of the five. We question EOP's contention that the first category—assignees—are not detailees. However, we recognize that the definition of detailee is subject to varying interpretations and that a difference of opinion on the detailee definition exists between EOP and us. As such, one of the effects of EOP's use of the assignee category is that these individuals are not considered detailees and are not included in the report to Congress on the number of persons working at any of the five offices subject to the detailee reporting requirement under Public Law 95-570. While OPM could revise its definition, given that EOP's view differs from ours on the importance of the supervision factor, we do not believe OPM would be likely to clarify its detail definition without legislation. Consequently, we believe that a more feasible approach may be for Congress to adopt a more specific definition of a detailee in statute and require EOP to include nondetailees as a separate category in its annual report to Congress on agency detailees to EOP.

Matter for Subcommittee Consideration

We believe supervision is an important factor in determining whether a person is a detailee but recognize that others can have a differing view. Inasmuch as the underlying issues in categorizing persons as detailees or assignees appear to be accounting for and reporting the costs and number of persons involved in operating the five EOP offices specified in Public Law 95-570, we believe Congress should resolve the differing views. We believe the Subcommittee should specify in law the definition of detailee and the critical factors, including supervision, to be applied and require EOP to report persons it considers nondetailees working at any of the five specified EOP offices as a separate category along with its report on detailees.

Recommendations

To ensure that agencies bill for and receive reimbursements for detailee services, we recommend that the Director of OMB inform agencies of their legal responsibility in this regard. The Director of OMB should further direct that each agency establish and carry out adequate procedures and financial controls to bill EOP in a timely manner. OMB could accomplish

these actions through its role as a focal point for directing the implementation of the Chief Financial Officers Act.

We recommend that the Director of OPM renotify agencies of the requirement for certifications of temporary Schedule C positions to ensure that agencies are aware of and adhere to this requirement. Furthermore, we recommend that the Director of OPM include the certification requirements for both permanent and temporary Schedule C positions in the Federal Personnel Manual to better ensure that the law is followed.

Agency Comments and Our Evaluation

OPM, OMB, and EOP provided written comments on a draft of this report. OPM and OMB agreed to implement our recommendations to them. Overall, EOP said that our findings show an improved situation relative to our previous reviews on the detailing of Schedule Cs and other employees to EOP. However, EOP reemphasized its disagreement with our interpretation of OPM's definition of a detail and the factors that need to be considered in determining whether a person is a detailee. It also does not believe further legislation on the definition of a detail is needed. Rather, EOP believes that the issues could be resolved through further discussions between it, OPM, and us.

While we would be pleased to continue discussions with EOP and OPM over the definition of a detail and the factors to be considered in making judgments on whether a person is on a detail, it is not clear to us that we would be able to reach agreement on the factors to be considered given our respective views. Accordingly, we continue to believe that the Subcommittee should consider specifying in law the definition of a detail and the factors to be considered. We recognize, however, that even a more precise definition would not necessarily preclude legitimate disagreements over whether particular situations should be considered details. As EOP stated, such determinations must be made on a case-by-case basis and may involve judgments with which reasonable people could disagree.

If, as EOP indicated, reimbursement is not an issue for the persons in question, the crux of the matter centers around disclosure of the number of people working at EOP. Accordingly, rather than spend time and resources extensively debating decisions on details, we believe that a legislative requirement, as we have suggested, for EOP to report persons working at EOP agencies it considers nondetailees, as well as detailees, is appropriate.

Appendix IV contains a more detailed discussion of EOP's comments on our draft report and our evaluation.

Appendixes II and III contain OPM's and OMB's comments.

As agreed with the Subcommittee, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the date of this letter. At that time we will send copies to the Deputy Assistant to the President for Management, EOP; the directors of OPM and OMB; agencies directly responsible for matters discussed in the report; and other interested parties. We will also make copies available to others upon request.

The major contributors to this report are listed in appendix V. Please contact me at (202) 275-5074 if you or your staff have any questions concerning this report.

Sincerely yours,



Bernard L. Ungar
Director, Federal Human Resource
Management Issues

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Abbreviations

DOD	Department of Defense
EOP	Executive Office of the President
EPA	Environmental Protection Agency
FMD	Financial Management Division
HHS	Department of Health and Human Services
OA	Office of Administration
OMB	Office of Management and Budget
OPF	Official Personnel Folder
OPM	Office of Personnel Management
SES	Senior Executive Service

Dollar Amounts for Detailees That Agencies Did and Did Not Bill EOP

Table I.1: Dollar Amounts for Which Agencies Did Not Bill EOP as of March 31, 1992

Department or agency	Number of detailees	Amount owed but not billed
EPA	4	\$94,504
Commerce	3	115,791
Justice	3	65,731
Interior	2	30,682
Transportation	2	40,513
Agriculture	1	11,357
DOD	1	22,742
Labor	1	1,077
HHS	1	33,330
Treasury	1	14,199
Total	19	\$429,926

Note: Excludes a detailee from the State Department. State's records showed that it had billed EOP for this detailee in September 1991. However, EOP officials said that they had not received a bill. A Partial payment was made by EOP in April 1992 after we brought this situation to EOP's attention.

Source: EOP records.

Table I.2: Dollar Amounts EOP Was Billed and Paid as of March 31, 1992

Department	Number of detailees	Amount EOP was billed and paid
DOD	2	\$26,203
Education	2	40,754
Justice	2	10,138
Interior	1	17,214
Labor	1	16,300
HHS	1	22,971
Housing and Urban Development	3	30,766
Transportation	1	27,009
Treasury	2	54,767 ^a
Total	15	\$246,122

^aThis amount includes a partial payment for a Treasury employee.

Source: EOP records.

Appendix I
Dollar Amounts for Detailees That Agencies
Did and Did Not Bill EOP

Table I.3: Dollar Amounts of EOP
Payments Made to Reimburse
Agencies Between March 31, 1992, and
August 31, 1992

Department or agency	Number of detailees	Amount paid
Commerce	2	\$64,851
Defense	1	22,742
Justice	2	63,999
Transportation	2	34,155
Treasury	1	14,199 ^a
Interior	2	31,985
Agriculture	1	11,357
Labor	1	1,186
EPA	2	72,985
Totals	14	\$317,459

^aExcludes a partial payment of \$4,638 for one additional detailee for which a previous payment had been made as of March 31, 1992.

^bExcludes a partial payment made to the State Department for one detailee. The Department of State reported that it billed EOP for this detailee in September 1991. However, EOP officials said that they had not received a bill as of March 31, 1992. A partial payment was made by EOP in April 1992 after we brought this situation to EOP's attention.

Source: EOP records.

Comments From the Office of Personnel Management



UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

OFFICE OF THE DIRECTOR

OCT 27 1992

Mr. Richard L. Fogel
Assistant Comptroller General
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Fogel:

Thank you for giving us the opportunity to review your draft report entitled Personnel Practices: Schedule C and other Details to the Executive Office of the President.

Your draft report suggests two OPM actions. We plan to implement both recommendations.

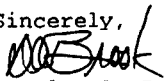
1. "Director of OPM renotify agencies of the requirement for certification of temporary Schedule C positions."

Although your review identified only one instance of an agency neglecting to certify that a temporary position was not being created solely to detail the employee to the White House, we agree with your recommendation that agencies be reminded of this important legal requirement.

2. "OPM should include the certification requirements for both temporary and permanent Schedule C positions in the Federal Personnel Manual (FPM) to formalize this requirement."

We also agree that this certification requirement, which is applicable to both permanent and temporary Schedule C positions, be more formalized by publication in FPM chapter 213. We will revise the FPM accordingly. We would like to note that OPM allows no personnel action to proceed without proper certification language provided by the hiring Department or Agency.

We appreciate the opportunity to comment on this draft report.

Sincerely,

Douglas A. Brook
Acting Director

Comments From the Office of Management and Budget



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEPUTY DIRECTOR
FOR MANAGEMENT

October 29, 1992

Mr. Richard L. Fogel
Assistant Comptroller General
General Government Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

Thank you for the opportunity to review and comment on the draft General Accounting Office report, Personnel Practices: Schedule C and Other Details to the Executive Office of the President.

You will be receiving comments on the draft report from the Office of Personnel Management and the Executive Office of the President (EOP) Office of Administration. We will confine our comments to the recommendation that OMB, in its role as a focal point for directing implementation of the Chief Financial Officers Act, direct agencies to establish adequate procedures and financial controls to bill EOP in a timely manner for reimbursable detailees.

We agree with the principle of this recommendation and will use the Chief Financial Officers Council as the means to convey these requirements.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frank Hodson".

Frank Hodson

Comments From the Executive Office of the President

Note: A GAO evaluation of EOP's comments appears at the end of this appendix.

THE WHITE HOUSE

WASHINGTON

October 29, 1992

Dear Mr. Fogel:

This responds to your letter of October 16, 1992, in which you sought our comments on the draft report entitled Personnel Practices: Schedule C and Other Details to the Executive Office of the President. We welcome the opportunity to comment.

It is our understanding from representations made to us by your staff that our comments will be published, in their entirety, as an appendix to your report. It should be noted that subsequent to your letter of October 16; on October 20 and 29, corrected copies of pages contained in the earlier draft were provided to us by your staff. Accordingly, our comments reflect those changes.

The Executive Office of the President (EOP) is comprised of 15 separate agencies. Your report covers only 5 of the 15 agencies; those agencies covered by Public Law 95-570. The title of the report implies that it covers the entire EOP, when it only covers select agencies. Further, the record indicates that the Bush Administration's use of detailees is substantially reduced from that of the Carter and Reagan Administrations, and that our reporting to Congress of our use of detailees has been considerably more accurate. Therefore, we recommend that the report be titled "Improved Personnel Practices: Schedule C and Other Details to Select Agencies of the Executive Office of the President." This would be an accurate and fair description of your findings.

We have faithfully and accurately reported to Congress our use of detailees as required by 3 U.S.C. 113. We have not reported to Congress five other categories of personnel who assist us here: (1) agency representatives representing their employing agency on task forces, councils and other such groups, (2) employees performing historically provided services, (3) White House Fellows, (4) Presidential Management Interns, and (5) assignees. These personnel were not reported because there is no requirement for us to do so. However, in the course of your review we did bring these other categories of personnel to your attention.

The General Accounting Office (GAO) contends that assignees could be detailees. It should be noted that the term "assignees" is not an official term, and that we are not wedded to that particular nomenclature. It is used to distinguish one additional group of individuals who do not meet the definition of a detailee. A definition that GAO has relied upon in all of

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Comments From the Executive Office of the
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its previous reports. (See GAO/GGD-87-102BR (July 1987); GAO/GGD-88-33 (March 1988); GAO/T-GGD-92-28 (April 9, 1992); and CG B-211373 (March 20, 1985).)

We believe that the definition of a detailee does not cover this category of personnel. Moreover, we believe that the final classification of an employee as a detailee or otherwise is a determination that must be made on a case-by-case basis resting on the facts and the good judgement of agency managers.

We believe there are certain factors that serve as a basis for making the judgement between an assignee and a detailee. These stem from the definition that GAO has relied upon for the past decade, as well as the updated definition published in the Federal Personnel Manual (FPM) on May 15, 1990.

The definition used in all previous GAO reports defines a detail as:

the temporary assignment of an employee to a different position in the same or another agency for a specified period, with the employee returning to his or her regular duties at the end of the detail.

The Office of Personnel Management (OPM) definition of a detailee as published in the FPM, Chapter 300, S8-3, is:

the temporary assignment of an employee to a different position or set of duties for a specified period of time.

The definition also specifies that:

an employee who continues to carry out the duties of the position to which permanently assigned and also performs some of the duties of another position for a limited time generally is not considered to be on a detail.

Under both definitions, the determinative factors are whether the duties change significantly and whether the change is temporary for a specified period of time. Although the definition of detailee has evolved over time, the current definition of a detailee still makes it clear that the term "different position" signifies a change of duties, and that those who continue to perform their permanent or regular duties are not detailees. That has been precisely our contention under the definition of assignees. These individuals continue to perform their permanent duties. Clearly, under both definitions, an individual could be detailed to a "different position" merely by changing his or her duties for a limited period of time, even though the place of work or supervisor did not change. Just as clearly, an individual could be temporarily assigned to a new duty station to perform their regular duties and would not be considered to be on a detail.

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Given the definition we have been working with for a number of years and the more detailed definition published in 1990, we find it difficult to understand your contention that detailees often perform the same work as they would in their normal duties. You have told us that you do not view the fact that an individual is performing work equivalent to his or her normal duties at the EOP as indicating that the individual is not a detailee. These statements are inconsistent with the recognized definition of a detailee and represent an expanded interpretation that has not been previously expressed in prior GAO reports on this matter.

We also do not agree with the GAO view that other factors are more relevant to determining whether an individual is a detailee. The factors suggested (supervision and the circumstances relating to each individual's assignment) are clearly outside the definition of the term "detailee" which has been consistently relied upon by GAO in all previous reports. A similar definition in the FPM is relied upon by every federal agency in their day-to-day personnel management practices.

As we discussed at a meeting with your representatives on September 22, the supervision factor is far too subjective to be considered as more relevant. In many instances an individual is performing regular duties within the EOP complex in order to fulfill the mission of the employing agency. Because the work may be performed by both EOP and agency personnel, supervision may also be provided on a joint basis. Indeed, some efforts such as literacy or health awareness have received special policy emphasis. Coordination of such efforts should not be confused with supervision by an EOP employee.

The assumption is made that if supervision is provided by EOP personnel, the individual supervised is a detailee -- qualified by the word "if". But what if the individual continues to receive primary supervision from his or her regular supervisor? The qualification of this factor is evidence that there is an opposite set of circumstances. The lack of clarity in the proposed new definition clearly highlights the weakness in your position. We do not agree with the assumption that program direction or coordination equates with employee supervision.

The accepted definition of a detailee is silent on the supervisory issue. In fact, it is not even mentioned or implied, let alone a controlling factor. An employee performing his or her regular duties while located within the EOP complex on a joint endeavor, may in fact, receive partial supervision by an EOP employee even though primary supervision is provided by the supervisor of record in the employing agency. The employee's work is his or her regular duty. Moreover, we do not believe such an individual is a detailee because we do not see how, under the definition, an employee can be temporarily assigned to perform his or her regular duties.

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On the other hand, if the individual is performing duties that are significantly beyond the scope of his or her regular duties while located within the EOP complex, that individual would be supervised by an EOP employee. In such instances, we have agreed to designate that individual as a detailee. The controlling factors in such instances remain consistent with the definition; the duties have changed on a temporary basis.

The second factor you considered to be relevant to determining whether an employee is a detailee is the circumstances relating to each individual's assignment to the EOP. In previous correspondence, you have stated that it would be relevant to determine "...who, if anyone, performed the services the individual is now performing at the EOP before the assignment was made and who would perform the services absent the assignment." In the case of individuals categorized as assignees, this is often not a helpful inquiry because the answer to both of these statements is that no EOP employee performed the duties prior to the assignment and no EOP employee will perform the duties following the assignment.

The work that is being done is the work of the employing agency and the person is assigned to the EOP because that particular program or activity is of major importance to an administration. The fact that a particular agency program has been designated to receive particular emphasis by an administration does not change the fact that the work is the congressionally-mandated responsibility of the employing agency. Assignees meet the criteria for non-reimbursability that is applicable to detailees.

Assignees do not perform EOP operations, nor are their costs appropriately attributed to the cost of operating the EOP. The work they perform is in support of the efficiency and effectiveness of their own agencies' programs. It should be recognized that this category of assignee reflects the collaborative efforts employing agencies and the EOP must undertake from time to time which stem, in part, from the unique nature of the EOP. It is itself a collection of advisors and analysts who have policy and advisory functions that draw upon all the departments and agencies subject to the Chief Executive.

We believe the category of assignees is meaningful, legitimate and adequately describes a small group of individuals who, by the nature of their work at the EOP, do not meet the definition of detailee. We would be willing to work with you to further refine the definition of this category. We do not believe further legislation is necessary or required. Rather, we believe that a suitable accommodation could be reached in joint discussions between our respective agencies and the OPM.

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The report references a previous suggestion in a March 1988 GAO Report (GAO/GGD-88-33) that the provisions of 5 CFR 330.501 be expanded to include Schedule C employees. (This section prohibits the detailing of an employee in the competitive service during the first 90 days of their initial appointment.) We do not believe such a restriction or benchmark is appropriate because Schedule C employees occupy:

positions of a confidential or policy determining character. The work of the position can be performed successfully only by someone with a thorough knowledge of and sympathy with the goals, priorities and preferences of an official who has a confidential or policymaking relationship with the President or the agency head. [Federal Personnel Manual, Chapter 213 (S 2-4a)].

A restriction on the use of Schedule C employees would have an adverse impact on the ability of the President to respond to both emergency situations in the short term and developing problems in the longer term.

This report is silent on one important point that we believe is necessary in terms of context for the reader. The laws governing our use of detailees are not applied to the legislative branch. Congress has exempted itself from annual reporting on its use of detailees, assignees, or other kinds of federal employees of the executive branch, GAO, and other government entities. Congress has also exempted itself from having to reimburse agencies for the use of detailees.

We want to acknowledge the professionalism demonstrated by Bernard Ungar and his staff over the course of the past several months. They conducted themselves appropriately, and considered our positions objectively and fairly.

Sincerely,



Paul W. Bateman
Deputy Assistant to the President
for Management and Director of the
Office of Administration

Mr. Richard L. Fogel
Assistant Comptroller General
United States General Accounting Office
Washington, D.C. 20548

GAO's Evaluation of EOP's Comments

In written comments on a draft of this report, EOP expressed concern in three substantive areas. Its concerns, along with our evaluation, are discussed next.

Definition of a Detail

In commenting on our draft report, EOP emphasized that it had accurately reported on its use of detailees. EOP indicated that it has not reported certain individuals who work at its agencies and who fall within five enumerated categories because these individuals did not come under the definition of detailees as set out in OPM guidance. EOP, however, was concerned that our report indicated that, depending on certain factors, individuals in one of these categories, "assignees," could be detailees.

EOP disagreed with our assessment of the factors that would be important to determine if an individual, such as an "assignee," was a detailee and subject to the reporting and reimbursement requirements of Public Law 95-570. EOP also pointed out that OPM guidance provides that persons who perform duties of his or her position and also perform duties of another position for a limited time are not on detail.

There is no disagreement between us and EOP as to the underlying definition of a detail that applies here. As set out in this report and OPM guidance, a detail is "the temporary assignment of an employee to a different position or set of duties for a specified period of time."

However, we and EOP disagree specifically about what factors are relevant in applying this definition and, in particular, whether the fact that an employee of an executive agency, who is assigned to work at EOP, has a new supervisor and a new work location indicate that the employee now occupies a new position. We believe that such factors together generally do indicate a different position. However, as stated in our report, we have not concluded that assignees are, in fact, detailees since we did not have sufficient information regarding these individuals. Moreover, we do not know whether in any of the specific situations involving the EOP assignees consideration of such a factor as supervision would mandate that they be classified as detailees.

EOP, on the other hand, maintains that any reliance on the supervision factor in determining whether an individual is an assignee or a detailee is not as relevant as other factors such as whether the individual's duties changed significantly. EOP also states that OPM's definition is silent on the issue of supervision. Rather, the key factor according to EOP is simply

whether the duties change significantly. It is EOP's view that an individual's duties have not changed significantly if the individual continues to perform the same work as he or she did in connection with the normal duties at the home agency.

We do not agree that the factors of supervision and job duties can be separated in this way. Even though OPM's definition of a detail does not use the term "supervision," the statute defining a federal employee cites supervision as one of three elements of the employee definition (5 U.S.C. 2105). We believe that, absent some evidence to the contrary, an individual who works for a new supervisor at a different location has taken on a different position, even if the individual applies the same basic skills and expertise to such duties. For example, in our view an antitrust attorney who is reassigned from the Justice Department to the Federal Trade Commission occupies "a different position" and performs different duties even if his or her substantive tasks are essentially the same. Such an individual clearly would be regarded as a detailee if the reassignment was temporary.

As noted above, EOP also pointed out that an employee is not on a detail if he or she continues to carry out the duties of his or her position and also temporarily performs some duties of another position. We agree with EOP that this would not by itself mean that an employee is on detail; however, if besides performing the additional duties the employee's location and supervisor changed, then we would consider this relevant to whether the position of the employee has changed and the employee is on a detail.

Concerning EOP's statement that we are expanding our interpretation by considering factors that have not been cited in prior GAO reports, we note that a discussion of the factors to be considered in deciding whether a person is a detailee was contained in our 1981 report that addressed the topic of detailees to EOP. In that report, we cited three factors EOP believed at that time were relevant: (1) duties, (2) location of position, and (3) supervision. Further, in our previous work in this area, the major issue centered on the question of whether detailees were reimbursable, not whether or not persons were detailees.

Another issue raised by EOP involves the degree of supervision by EOP officials and by the supervisor of record in the employing agency. Again, we agree with EOP that the final determination of an employee as a detailee must be made on a case-by-case basis, resting on the facts and good judgment of agency managers. We would agree with EOP that if a person

were jointly supervised by EOP and the lending agency, such a situation would have to be considered in making a judgment. With respect to our current review, we had only limited information on the duties of some of the assignees and no information on other factors involved in their work at EOP. Accordingly, we were not in a position to express case-by-case views on whether the assignees, in reality, were detailees.

EOP also addressed the relevancy of who performed the services at EOP before the assignment and who would perform the services in the absence of such assignment. EOP contends that the work being done by assignees is the work of the lending agencies and the persons are assigned to EOP because the particular activity or program involved is a presidential priority as well as a responsibility of the lending agencies. EOP further contends that no one performed the service before the assignment and no one would perform the services absent such assignment. We do not see the fact that the program or activity is a responsibility of an agency as necessarily meaning EOP would not have its own employees work on the program or activity. Moreover, the statute governing the detail of an executive branch employee to the EOP, 3 U.S.C. § 112, provides that agencies must be reimbursed for the pay of each employee who is detailed for over 180 days in a fiscal year and “who is performing services which have been or would otherwise be performed by an [EOP] employee.”

Need for Legislative Change

Regarding our suggestion that the Subcommittee consider specifying in law the definition of a detailee and critical factors, including supervision, to be applied, EOP said it does not believe that further legislation is necessary or required. Rather, EOP expressed its willingness to work with us to further refine the definition and believes a suitable accommodation could be reached in joint discussions between itself, us, and OPM.

We would be happy to continue a dialogue with EOP and OPM on refinements to the definition of a detail, including factors and/or criteria that should be applied in making a determination of whether an individual is or is not a detailee. However, as much as the ultimate definition will affect the way agencies implement legislative requirements, we believe Congress also needs to be involved.

It is also apparent to us that we and EOP have a fundamental difference of opinion on possible factors, such as supervision, to be considered in defining a detailee. It is not clear to us at this point whether continued dialogue would resolve these differences. Even if it does, Congress will

ultimately need to decide whether any agreements reached are acceptable to it for the purposes of Public Law 95-570. Accordingly, while we believe continued dialogue on the detailee definition among EOP, OPM, and us is worthwhile and could facilitate congressional consideration, we continue to believe that the Subcommittee should eventually amend Public Law 95-570 to (1) clarify the detailee definition and (2) require EOP to report on the number of nondetailees as well as detailees working at EOP. Such action could be particularly helpful considering the loss of “institutional” memory that could occur given likely turnover within the executive and legislative branches over time.

Schedule C Details

EOP also raised concern about the use of a 90-day period from date of appointment to date of detail of Schedule Cs to EOP as a benchmark or restriction. EOP believes the 90-day period would adversely affect EOP’s ability to respond to problems. Our report did not cite the 90 days as a restriction for detailing of Schedule Cs, but we did use the 90 days as a benchmark for raising questions on the appropriateness of details. We continue to believe that 90 days is a reasonable period to use as an indicator of whether an agency hired a Schedule C solely or primarily for detail to EOP. Our report clearly states that the 90-day period is not a restriction and that for the one case we found in this review where a Schedule C was detailed to EOP within 90 days, there was no evidence suggesting that the person was hired solely or primarily for detail to EOP.

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Personnel Practices: Detailing of Federal Employees to the White House
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